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HAWAII
LABOR RELATIONS BOARD

Attorneys for Director of Labor
and Industrial Relations

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of)	CASE NO. OSAB 2001-09
)	(OSHCO ID HO512)
DIRECTOR, DEPARTMENT OF)	(Inspection No. 302954490)
LABOR AND INDUSTRIAL RELATIONS,)	
)	
Complainant,)	
)	STIPULATION AND SETTLEMENT
vs.)	AGREEMENT; EXHIBIT A;
)	APPROVAL AND ORDER
GOODFELLOW BROS. INC.,)	
)	
Respondent.)	
)	

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STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and GOODFELLOW BROS. INC., ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about November 14, 2000 through January 3, 2001, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's

workplace located at 1200 Waimano Home Road, Pearl City, Hawaii 96782.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty ("Citation") to Respondent on January 9, 2001, alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$2,000.00 as contained in the Citation, a copy of which is attached hereto and incorporated herein as Exhibit "A".

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to Section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 1200 Waimano Home Road, Pearl City, Hawaii 96782.

3. At all relevant times, Respondent was an employer, as defined in Section 396-3, HRS, and employed employees, as defined in Section 396-3, HRS, and was therefore subject to the requirement of Chapter 396, HRS, the Hawaii Occupational Safety and Health Law.

4. Respondent has abated each item of the Citation and Notification of Penalty issued on January 9, 2001 as of April 30, 2002. The Director is satisfied that the report of Kauai Environmental, Inc. dated April 30, 2002 and the notes of David Gerow, CIH, CSP that is attached to the report has abated the Citation 1, Item 1; and previous memos from Respondent's counsel has indicated that Respondent has abated Citation 2, Item 1.

5. Citation 1, Item 1 for the violation of Hawaii Administrative Rules Title 12, Department of Labor and Industrial Relations, Subtitle 8 Occupational Safety and Health (HAR) §12-200-9 is reclassified from "Serious" to "Other".

6. The Director reduces the aggregate penalty from \$2,000 to \$500, payable within thirty (30) days after the approval of this Stipulation and Settlement Agreement to the Director of Budget and Finance, State of Hawaii.

7. By entering into this Agreement, Respondent does not admit that it violated the cited standards for any litigation or purposes other than a subsequent proceeding that may be brought under the Hawaii Occupation Safety and Health Law.

8. Except for the stipulated amendments described above, the Citation issued on January 9, 2001 is affirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director. See Exhibit "A".

9. The Respondent agrees and understands that if the penalty as amended above is not paid as above, the penalty shall revert to the original citation amount of \$2,000 upon written notice by the Director. Further, that the original citations and penalties as issued on January 9, 2001 shall become a final order.

10. The Respondent agrees to pay reasonable attorney's fees and costs if the Director institutes legal action to collect any unpaid balance should the Respondent default on the payment of the penalties.

11. Respondent shall continue to comply with Chapter 396, HRS, the Hawaii Occupational Safety and Health Law, and the related rules.

KATHLEEN RACUYA-MARKRICH, Member

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813
Phone: (808)586-9090 FAX: (808)586-9104

COPY



RECEIVED

JAN 10 2000

Certified Number: P 7000 0520 0021 8907 5020

GOODFELLOW BROS.-OAHU

Citation and Notification of Penalty

To:

Goodfellow Brothers Inc
and its successors
P O Box 970358
Waipahu, HI 96797

Inspection Number: 302954490
Inspection Date(s): 11/14/2000- 01/03/2001
Issuance Date: 01/09/2001
OSHC ID: H0512
Optional Report No.: 0301

Inspection Site:

1200 Waimano Home Rd
Pearl City, HI 96782

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Issuance of this Citation does not constitute a finding that a violation of the law has occurred unless there is a failure to contest as provided for in the law or, if contested, unless this Citation is affirmed by the Department of Labor and Industrial Relations Appeals Board or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 20 calendar days after receipt, the proposed citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the Appeals Board.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful and Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been

discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

FOR JENNIFER SHISHIDO, ADMINISTRATOR
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
830 PUNCHBOWL STREET
HONOLULU, HI 96813

Goodfellow Brothers Inc
P O Box 970358
Waipahu, HI 96797

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
How corrected: _____

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

State of Hawaii

Hawaii Occupational Safety and Health Division



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 01/09/2001. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 423, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 302954490

Inspection Dates: 11/14/2000-01/03/2001

Issuance Date: 01/09/2001



830 Punchbowl Street, Room 423
Honolulu, HI 96813

Citation and Notification of Penalty

Company Name: Goodfellow Brothers Inc
Inspection Site: 1200 Waimano Home Rd, Pearl City, HI 96782

Citation 1 Item 1 Type of Violation: **Serious**

12-200-9(b) When employees were subjected to sound levels exceeding those listed in Table 200-1, feasible administrative or engineering controls were not utilized; i.e., the dose of the operator who operated the bulldozer in a normal working period for construction work was 192.32% or more.

Location: Establishment

Date By Which Violation Must be Abated:

02/12/2001

Proposed Penalty:

\$ 2,000.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety And Health Division

Inspection Number: 302954490

Inspection Dates: 11/14/2000-01/03/2001

Issuance Date: 01/09/2001



830 Punchbowl Street, Room 423
Honolulu, HI 96813

Citation and Notification of Penalty

Company Name: Goodfellow Brothers Inc

Inspection Site: 1200 Waimano Home Rd, Pearl City, HI 96782

Citation 2 Item 1 Type of Violation: **Other**

12-200-10(a) A continuing, effective hearing conservation program, as described in Section 12-200-10 through 26, whenever employee noise exposure equaled or exceeded, an 8-hour time-weighted average sound level (TWA) of 85 decibels measured on the A scale slow response or, equivalently, a dose of 50%, for construction work, was not administered; i.e., except for hearing protection, the elements of hearing conservation program was not administered for an employee exposed to a noise dose of 192% while operating a bulldozer during a normal 7-hour exposure period.

Location: Establishment

Abatement Notes:

An effective hearing conservation program requires:

1. Personal noise exposure monitoring for the employees who operate the bulldozer and other machines, the 8-hour Time-weighted average of noise exposure in the use of which, may equal or exceed 85 dBA (87 dBA including the error of instrument) or 50% of dose (67% including the error of instrument). After monitoring, to notify each employee exposed at or above an 8-hour time-weighted average of 85 dBA (87 dBA including the error of instrument) of the results of monitoring;
2. The opportunity for affected employees or their representatives to observe any noise measurements conducted pursuant to Chapter 12-200;
3. An audiometric testing program as provided in Section 12-200-17;
4. Audiometric test requirement in Section-200-18;
5. The opportunity for employees to select their hearing protectors as required in Section 12-200-19;
6. A training program as required in Section 12-200-21. Especially, make sure that the training is adequate and updated, provided annually, and covers all affected employees. A copy of the noise standards must be posted in the workplace;

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

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Citation and Notification of Penalty

Company Name: Goodfellow Brothers Inc

Inspection Site: 1200 Waimano Home Rd, Pearl City, HI 96782

7. The access for employees to information and training materials as required in Section 12-200-22;

8. Recordkeeping as required in Section 12-200-24; and

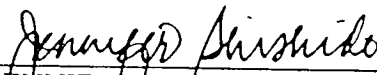
9. The requirements in Sections 12-200-25.

Date By Which Violation Must be Abated:

02/12/2001

Proposed Penalty:

\$ 0.00



JENNIFER SHISHIDO
Administrator

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813

SUMMARY OF PROPOSED PENALTIES

Company Name: Goodfellow Brothers Inc
Inspection Site: 1200 Waimano Home Rd, Pearl City, HI 96782
Issuance Date: 01/09/2001

Summary of Penalties for Inspection Number 302954490

Citation 1, Serious	= \$	2,000.00
Citation 2, Other	= \$	0.00
TOTAL PROPOSED PENALTIES	= \$	2,000.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$7.50 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.